

**Haddon House Food Products, Inc. and Flavor Delight, Inc. and Teamsters Local 115, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 4-CA-7700**

March 19, 1982

**ORDER DENYING MOTION**

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On June 12, 1979, the National Labor Relations Board issued its Decision and Order in this matter,<sup>1</sup> in which it found that Respondent engaged in numerous and egregious violations of Section 8(a)(1) and (3) of the Act in response to its employees' organizational activities and violated Section 8(a)(3) and (1) by refusing to reinstate unfair labor practice strikers upon their unconditional offer to return to work. As part of the remedy for the unfair labor practices found, the Board ordered, *inter alia*, a series of remedial actions requiring Respondent to grant the Charging Party (hereinafter referred to as the Union) access to company bulletin boards and other posting places for a 2-year period, to make available to the Union a list of the names and addresses of its current employees, to give union spokesmen reasonable access to nonwork areas during nonwork periods, to grant the Union equal time if Respondent convenes its employees for an in-plant speech on union representation, and to allow the Union to make one 30-minute preelection speech if there is a Board election involving the Union.<sup>2</sup> The Board also ordered Respondent to engage in various notice remedies,<sup>3</sup> but declined to issue a bargaining order.<sup>4</sup>

Subsequent to the issuance of the Board's decision, the Union and Respondent filed petitions for review and the Board filed a petition for enforcement with the United States Court of Appeals for the District of Columbia. On January 26, 1981, the court issued its decision<sup>5</sup> granting enforcement of the Board's Order, as modified,<sup>6</sup> and on November

4, 1981, following the denial of writs of certiorari by the United States Supreme Court, the court entered its judgment therein.

On December 22, 1981, Respondent filed with the Board a motion for reconsideration and modification of the Order, and for reopening of the record and rehearing.<sup>7</sup> Thereafter, the General Counsel filed a brief in opposition to Respondent's motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In its motion Respondent asserts that extraordinary circumstances and events which transpired subsequent to the court's decision warrant modification of the Board's Order.<sup>8</sup> However, we note that while Section 10(d) of the Act provides that the Board may, until the record is filed in a court, modify or set aside any order issued by it,<sup>9</sup> Section 10(e) of the Act provides that upon the filing of the record "the jurisdiction of the court shall be exclusive and its judgment and decree shall be final," subject, of course, to review by the Supreme Court. Accordingly, since, as noted above, the Board's Order has already been enforced, we no longer possess jurisdiction to modify that Order. *Royal Typewriter Company, a Division of Litton Business Systems, Inc., et al.*, 239 NLRB 1 (1978). See also *N.L.R.B. v. Mastro Plastics Corporation*, 261 F.2d 147, 148 (2d Cir. 1958); cf. *Flav-O-Rich, Inc. v. N.L.R.B.*, 531 F.2d 358, 361 (6th Cir. 1976).<sup>10</sup>

Accordingly, it is hereby ordered that Respondent's motion for reconsideration and modification of the Board's Order, and for reopening of the record and rehearing, be, and it hereby is, denied.

<sup>7</sup> Respondent has also requested oral argument. This request is hereby denied as the record adequately presents the issues for consideration.

<sup>8</sup> Respondent relies on its recognition and execution of a collective-bargaining agreement in July 1981 with Local 80, Food and Allied Service Workers, chartered by United Food and Commercial Workers, AFL-CIO. Such recognition is the subject of current unfair labor practice proceedings.

<sup>9</sup> Sec. 102.49 of the Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, provides that the Board may modify any findings or order made or issued by it until the transcript of the record is filed in court.

<sup>10</sup> In addition, we note that Sec. 102.48(d) of the Board's Rules and Regulations requires that a motion for reconsideration, rehearing, or reopening of the record must be based on "extraordinary circumstances" and "shall be filed within 20 days, or such further period as the Board may allow, after the service of its decision or order." The "extraordinary circumstances," as contended by Respondent, *supra*, fn. 8, arose in July 1981. The instant motion was not filed for several months following these events, and approximately 7 weeks after the court's final judgment enforcing the Board's Order, as modified. Moreover, we note that the motion was filed well over 2 years after the Board's Order. Therefore, we also conclude that Respondent's motion is untimely.

<sup>1</sup> 242 NLRB 1057.

<sup>2</sup> Member Murphy did not join in finding the access remedies appropriate.

<sup>3</sup> Member Penello dissented from the "full extent" of the extraordinary remedies ordered.

<sup>4</sup> Then-Chairman Fanning and Member Jenkins dissented from the Order insofar as it failed to include a bargaining order.

<sup>5</sup> 640 F.2d 392.

<sup>6</sup> The court did not adopt that portion of the Board's Order requiring Respondent's manager and owner, Harold Anderson, to personally read to employees the contents of the Board's notice.